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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 307 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

ANANDIBEN K SHAH

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal has referred the following question for the opinion of this Court at the instance of the revenue :

"Whether, the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.1,23,885/- added under sec.64(1)(i) in respect of share income of K.V.Shah HUF?"

2 The assessment year is 1984-85. The assessee was a partner in a partnership firm and one of the other partners was K.V.Shah, HUF represented by the karta i.e. husband of the assessee. The ITO included the share income of the HUF from the said firm in hands of the assessee u/s.64(1)(i) of the Act. His attention was invited to the decision of this Court in the case of Dinubhai Ishwarlal Patel vs. ITO (1979) 118 ITR 122 but he declined to follow the said decision on the ground that the department had not accepted the said decision. The assessee succeeded in appeal before the CIT (Appeals) and the said appellate order was confirmed by the Tribunal following the decision of this Court in the case of Dinubhai Ishwarlal Patel (Supra).

3 We have heard Mr.Akil Qureshi, learned Counsel for the revenue. Though served none appears for the assessee.

4 At the time of hearing, our attention was drawn to a decision of this Court in case of CIT vs. Vallabhdas Manjibhai (1987) 163 ITR 59, wherein this Court followed the earlier decision in case of Dinubhai Ishwarbhai Patel(Supra). The ratio of the decision of this Court in case of Dinubhai Ishwarbhai Patel and Vallabhdas Manjibhai (Supra), are impliedly approved by the Apex Court in the case of CIT vs. Shri Om Prakash & Others (1996) 217 ITR 785.

5 In light of the aforesaid decisions we find no good reason to take any other view of the matter. The Tribunal was right in law in deleting the addition of Rs.1,23,885/- added under section 64(1)(i) of the Act. The question referred to us is therefore answered in the affirmative i.e. in favour of the assessee and against the revenue.

6 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah,J) (D.A.Mehta,J)

m.m.bhatt